SUPREME COURT OF THE UNITED STATES
October Term, 1993
No.

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

Myong Magnuson, d/b/a
Yoshiko's Sauna,

Petitioner,

vs.

City of Minneapolis,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOLUME I

Randall D.B. Tigue
Attorney for Petitioner
2620 Nicollet Avenue
Minneapolis, Minnesota 55408
(612) 874-9903

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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis,

a municipal corporation, Case No.: 92-08094

Plaintiff, Case Type: Injunction

vs.

Helen Fisher, Un Sil Olson

aka Un Sil Berg, and Myong Magnuson **SUMMONS**

dba Yoshiko's Sauna,

Defendants.

STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon plaintiff's attorney an answer to the Complaint which is herewith served upon you within 20 days of service of this Complaint upon you, exclusive of the day of service. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint.

Dated: April 24, 1992

ROBERT J. ALFTON

City Attorney

Attorney Reg. No. 1119

SCOTT REEVES

Assistant City Attorney

Attorney Reg. No. 90128

Attorneys for Plaintiff

A-1700 Government Center

300 South Sixth Street

Minneapolis, MN 55487

(612) 673-2066

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a

municipal corporation, Case No. : 92-08094

Plaintiff, Case Type: Injunction

vs.

VERIFIED COMPLAINT

Helen Fisher, Un Sil Olson

aka Un Sil Berg, and Myong Magnuson

dba Yoshiko's Sauna,

Defendants.

The above-named Plaintiff, for its Complaint against Defendants, hereby alleges the following:

1. This action is brought pursuant to Minnesota Statutes Sections 617.80 through 617.87 to order the abatement of a public nuisance, Yoshiko's Sauna, located at 117 North Washington Avenue, in the City of Minneapolis.

2. Plaintiff City of Minneapolis is a municipal corporation organized under the laws of the State of Minnesota.

3. The legal description of the property at 117 North Washington Avenue, Minneapolis, Minnesota is the northwesterly 22 feet of Lot 8, Block 55, town of Minneapolis addition. The Hennepin County property identification number is 22-029-24-41- 0065. The building situated on the property contains a business known as Yoshiko's Sauna.

4. Defendants Helen Fisher and Un Sil Olson aka Un Sil Berg are the fee owners of record of the property at 117 North Washington Avenue, Minneapolis, Minnesota, holding title by warranty deed dated June 13, 1983. Defendant Helen Fisher is the taxpayer of record for the property as recorded with the Hennepin County Auditor for taxation purposes, and therefore the "owner as defined in Minnesota Statutes, Section 617.80, Subd. 7.

5. Myong Magnuson has registered the name "Yoshiko's, as an unincorporated business trade name with the Minnesota Secretary of State as of March 27, 1991. On information and belief, Magnuson is the manager or operator of Yoshiko's Sauna.

6. There have been two (2) criminal convictions for acts of prostitution committed within Yoshiko's Sauna which qualify to establish that the premises is a nuisance under Minnesota Statutes, Section 617.81. One of the convictions is a gross misdemeanor. These

convictions are specifically described below:

(a) Defendant: Suzy W. Kotts

HCDC File No. 90-089051

Charge: Prostitution (M.S. 609.324 s.3)

Date of Offense: 11-27-90

Date of Conviction: 3-27-91

Notice of Conviction: 4-24-91

Category: Gross Misdemeanor

(b) Defendant: Lola Jean Skenadore aka Ekobena

HCDC file No. 91-039512

Charge: Prostitution (M.S. 609. 324s.3)

Date of Offense: 6-4-91

Date of Conviction: 9-19-91

Notice of Conviction: 9-23-91

Category: Misdemeanor

As a result of the above-described prostitution convictions, the building at 117 North Washington Avenue containing the Yoshiko's Sauna constitutes a public nuisance under Minnesota Statutes, Section 617.81.

7. Notice of the above-referenced convictions has been mailed by the Hennepin County District Court administrator to the owners of the building as defined in Minnesota Statutes, Section 617.80, Subd. 7, and to interested parties as defined in Minnesota Statutes, Section 617.80, Subd. 8. Notices of the above-referenced convictions have been filed with the Hennepin County Recorder against the property located at 117 North Washington Avenue.

8. Pursuant to Minnesota Statutes, Section 617.81, Subd. 3, notice of the above-referenced convictions is sufficient to inform all interested parties that the building at 117 North Washington Avenue is being used for purposes constituting a public nuisance. Despite notice of the above-referenced convictions, the defendants have done nothing to stop Yoshiko's Sauna from operating at 117 North Washington Avenue.

9. Since the date on which notice of the most recent prostitution conviction was mailed to owners and interested parties, there have been two additional arrests for acts of prostitution occurring at Yoshiko's Sauna. These arrests are as follows:

(a) Defendant: Kathie Lee Moos

HCDC File No.: 91-091402

Charge: Prostitution (M.S. 609.324s.3)

Date of Offense: 12-10-91

Status: Bench Warrant (No appearance at Trial 4-2-92)

(b) Defendant: Frances Tamel Brown

HCDC File No.:

Charge: Prostitution (M.S. 609 .324s.3)

Date of Offense: 3-19-92

Status: 1st appearance 5-6-92

10. During their visits to Yoshiko's Sauna, vice officers have observed that female employees greet customers and perform massages in lingerie or other revealing clothing, and that the business engages in other practices indicating that it is not a legitimate sauna or massage business, but an outlet for prostitution.

11. As a result of the prostitution convictions set forth in paragraph 6 of this Complaint, and the continued course of unlawful conduct at Yoshiko's Sauna, the building at 117 North Washington Avenue constitutes a public nuisance under Minnesota Statutes, Sections 617.80 through 617.87.

12. In the interest of the public welfare, a temporary and permanent injunction, and an order for abatement, are necessary to prevent further

unlawful activity.

WHEREFORE, plaintiff requests the judgment and decree of the Court as follows:

1. Declaring the building at 117 North Washington Avenue,, Minneapolis, Minnesota, to be a public nuisance under Minnesota Statutes, Sections 617.80 through 617.87.

2. Entering an order of abatement pursuant to Minnesota Statutes, Section 617.83, directing the closing of the building at 117 North Washington Avenue for one year. Appointing a receiver to control and use the building, or affected portion thereof, in a manner approved by the court, pursuant to Minnesota Statutes, Section 617.84.

3. Directing the removal of movable property used in conducting and maintaining Yoshiko's Sauna and the sale of such property, pursuant to Minnesota Statutes, Section 617.84.

4. Ordering Defendants to do all necessary acts to cause the immediate cessation of the business known as Yoshiko's Sauna at 117 North Washington Avenue, including, if necessary, canceling any lease or contract with Yoshiko's Sauna, and evicting yoshiko's Sauna from the building.

5. Temporarily and permanently enjoining defendants from operating,

leasing to, or allowing any other person to operate, any other sauna, massage parlor, rap parlor, outcall service, escort service, or similar business, at 117 North Washington Avenue.

6. Temporarily and permanently enjoining any person who owns, operates, or manages the business known as Yoshiko's Sauna from operating said business.

7. Ordering defendants to post a bond in the sum of ½ $50,000.00 conditioned that they will immediately abate the public nuisance at 117 North Washington Avenue for a period of at least one year, and will not allow any part of the building at 117 North Washington Avenue to be used for prostitution-related activities.

8. Ordering defendants to pay all costs and disbursements incurred by plaintiff in this action.

9. Imposing the continuing jurisdiction of the Court upon defendants for such reasonable time, not less than one year, to assure compliance by the defendants with the orders of the court in this action.

10. For such other relief as the Court may deem just, fair, and equitable.

ROBERT J. ALFTON

City Attorney

Attorney Reg. No. 1119

By:

SCOTT REEVES

Assistant City Attorney

Attorney Reg. No. 90128

Attorneys for Plaintiff

A-1700 Government Center

300 South Sixth Street

Minneapolis, MN 55487

(612) 673-2066

VERIFICATION

STATE OF MINNESOTA)

)ss

COUNTY OF HENNEPIN)

Scott Reeves, being first duly sworn, upon oath says: that he is an officer of the City of Minneapolis, to-wit, an assistant city attorney; that he has read the foregoing Verified Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

_____

Scott Reeves

Sworn to and subscribed before me

this ____ day of_____, 1993

_____

Notary Public

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a municipal corporation,

Plaintiff,

vs.

Helen Fisher, Un Sil Olson a/k/a Un Sil Berg, and Myong Magnuson, d/b/a Yoshiko's Sauna,

Defendants.

SEPARATE ANSWER, COUNTERCLAIM AND CROSSCLAIM OF DEFENDANT MYONG MAGNUSON

Case No. 92-8094

Defendant Myong Magnuson, by the undersigned, for her answer to Plaintiff's complaint alleges the following:

FIRST DEFENSE

1. Except as hereinafter admitted or qualified, this answering Defendant denies each and every allegation of Plaintiff's Complaint.

2. This answering Defendant admits the allegations contained in Paragraphs 2, 3 and 4 of Plaintiff's Complaint.

3. Defendant specifically denies the allegations contained in Paragraphs 8, 11, and 12 of the Complaint.

4. With respect to Paragraph 1 of the Complaint, this answering Defendant admits that the action purports to be brought under the statutes cited. This answering Defendant denies that Plaintiff is entitled to any relief under the statutes.

5. With respect to Paragraph 5 of the complaint, this answering Defendant admits to having registered the trademark "Yoshiko's" with the Secretary of State's office, in order to comply with the law. This answering Defendant denies that she is the exclusive manager, owner, or operator of said business.

6. This answering Defendant admits that the prostitution convictions alleged in paragraph 6 have occurred. This answering Defendant specifically denies that the conduct leading to said convictions occurred at any time that this answering Defendant had a legal interest in or operational control over the subject premises.

7. With respect to paragraph 7 of the complaint, this answering Defendant admits that the notices set forth were mailed to the owners of the building and that said notices have been filed with the County Recorder. This answering Defendant specifically denies that said notices have been mailed to all interested parties, as defined in Minnesota Statutes Section 617.80, Subd. 8.

8. With respect to Paragraph 9 of the complaint, this answering Defendant admits that the two prostitution arrests alleged in said paragraph have occurred. This answering Defendant affirmatively alleges that, in the absence of convictions, said arrests are irrelevant. This answering Defendant further denies that they occurred subsequent to the mailing of notices to owners and interested parties, in that this answering Defendant denies that notice has been mailed to all interested parties.

9. With respect to paragraph 10 of the complaint, this answering Defendant is without sufficient knowledge to admit or deny what vice officers have observed on their visits to Yoshiko's Sauna. This answering Defendant specifically denies that Yoshiko's is an outlet for prostitution during the period of time that said premises are controlled by this answering Defendant.

SECOND DEFENSE

10. This answering Defendant leases only one-half interest in the premises known as Yoshiko's Sauna.

11. Said lease permits this answering Defendant to occupy the subject premises only one-half of the days of each calendar year.

12. On the remaining days of the year, the other one-half interest is

leased, occupied and controlled exclusively by one Suzy Woo Kotts.

13. Both of the convictions alleged in Paragraph 6 of Plaintiff's complaint, giving rise to the alleged nuisance occurred during the period of time when the premises were occupied and controlled exclusively by said Suzy Woo Kotts, not by this answering Defendant.

14. As a result, this answering Defendant is not chargeable with maintaining a nuisance building, within the meaning of the statutes in question.

THIRD DEFENSE

15. This answering Defendant re-alleges the allegations set forth in Paragraphs 1-14, supra.

16. As a result, to enforce the nuisance abatement statute against this answering Defendant would constitute a deprivation of the right to property without due process of law.

THIRD DEFENSE

17. This answering Defendant re-alleges the allegations set forth in Paragraphs 1 - 16, supra.

18. As a result, to enforce the nuisance abatement statute this answering Defendant would constitute an unlawful taking of this answering Defendant's property without just compensation, in violation

of the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1, Section 13 of the Minnesota Constitution.

FOURTH DEFENSE

19. This Court lacks subject matter jurisdiction to hear the present lawsuit, in that the court administrator has failed to mail Notice of Convictions to all interested parties, within the meaning of Minnesota Statutes Section 617.80, Subd. 8, as mandated by Minnesota Statutes Section 617.81, Subd. 3.

COUNTERCLAIM

For her counterclaim against Plaintiff, this answering Defendant alleges the following:

1. This answering Defendant re-alleges the allegations set forth in his answer, supra.

2. The 1987 session of the Minnesota Legislature enacted Minnesota Statutes Section 617.80-617.87, relating to civil actions for the abatement of public nuisances. Such statute provides, in pertinent part, as follows:

617.80 Definitions

Subdivision 1. Generally. The definitions in this section apply to Sections 617.80 to 617.87.

Subd. 2. Building. 'Building' means the structure suitable for human shelter, a commercial structure that is maintained for business activities but involve human occupation or any portion of such structures.

Subd. 3. Movable property. Movable property' means furniture and fixtures.

Subd. 4. Prostitution. 'Prostitution' or 'prostitution related offenses' means the conduct defined in Sections 609.321 to 609.324. ***

Subd. 6. Disorderly House. 'Disorderly house' has the meaning assigned to it in Section 609.333.

Subd. 7. Owner. 'Owner' for purposes of Sections 617.80 to 617.87 means the person in whose name the building or affected portion is recorded with the county auditor for taxation purposes.

Subd. 8. Interested Party. 'Interested party' for the purposes of Sections 617.80 to 617.87 means any lessee, tenant, or occupant of a building or affected portion of a building and any known agent of an owner, lessee, tenant, or occupant.

617.81. Nuisance; acts constituting; injunction; notice.

Subdivision 1. Injunction. In order to maintain a temporary injunction under Section 617.82 or a permanent injunction or order of abatement under Section 617.83 the provisions of 617.80 to 617.87 must be followed.

Subdivision 2. Acts constituting a nuisance. For purposes of sections 617.80 to 617.87 a public nuisance exists upon proof of any of the following:

Three or more misdemeanor convictions or two or more convictions, of which at least one is a gross misdemeanor or felony within the previous two years for acts of prostitution or prostitution-related offenses committed within the building;

(3) Two or more convictions within the previous two years for keeping or permitting a disorderly house in the building.

Subdivision 3. Notice. Notice of a conviction described in Subdivision 2 must be mailed by the Court Administrator to the owner of the building where the offense was committed and all other interested parties and must filed with the County Recorder's office. This notice is considered sufficient to inform all interested parties that the building or portion of it is being used for purposes constituting a public nuisance.

617.82.Temporary Order.

Whenever a city attorney, county attorney, or the attorney general has cause to believe that a nuisance described in Section 617.81 Subdivision 2, exists within the jurisdiction the attorney serves, that attorney may by verified petition seek a temporary injunction in district court in the

county in which the alleged public nuisance exists. No temporary injunction may be issued without a prior show cause notice of hearing to the respondents named in the petition and an opportunity for respondents to be heard. Upon proof of a nuisance described in Section 617.81 Subdivision 2 the court shall issue a temporary injunction. Any temporary injunction issued must describe the conduct to be enjoined.

617.83. Injunction; order of abatement.

Upon proof of a nuisance described in Section 617.81, Subdivision 2, the court shall issue a permanent injunction and enter an order of abatement. The permanent inunction must describe the conduct permanently enjoined. The order of abatement must direct the closing of building or a portion of it for one year except as otherwise provided in Section 617.84 or 617.85, unless sooner released pursuant to Section 617.87. Before an abatement order is enforced against a building or portion of it, the owner must be served with the abatement order and a notice of the right to file a motion under Section 617.85 in the same manner that a summons is served under the Rules of Civil Procedure. A copy of the abatement order shall also be posted in a conspicuous place on the building or the affected portion.

617.84. Movable property.

The order of abatement may direct the removal of movable property used in conducting or maintaining the nuisance and direct the sale of property belonging to respondent who was notified or appeared. The sale shall be conducted pursuant to the provisions of Chapter 550 on the sale of property on execution. A person appointed by the court as a receiver of the building may use a building or portion of it which is the subject of an abatement order in a manner approved by the court. Cost of the sale on execution, moving and storage fees, and any receivership must be paid out of the proceeds of the sale of movable property or any rents collected during the receivership. The balance from the sale of movable property.

617.85. Nuisance; motion to cancel lease.

Where an abatement of a nuisance is sought and the circumstances that are the basis for the requested abatement involved the acts of a commercial or residential tenant or lessee of part or all of a building, the owner of the building that is subject to the abatement proceeding, may file before the court that has jurisdiction over the abatement proceeding a motion to cancel the lease or otherwise secure restitution of the premises from the tenant or lessee who has maintained or conducted the nuisance. In addition to the grounds provided in Chapter 566, the

maintaining or conducting a nuisance as defined in Section 617.81, Subdivision 2, by a tenant or lessee, is an additional ground authorized by law for seeking the cancellation of a lease for restitution of the premises. It is no defense to a motion under this section by the owner that the lease or other agreement controlling the tenancy or leasehold does not provide for eviction or cancellation of the lease upon the grounds provided in this section.

Upon a finding by the court that the tenant or lessee has maintained or conducted a nuisance in any portion of the building under control of the tenant or lessee, the court shall order cancellation of the lease or tenancy and grant restitution of the premises to the owner. The court must not order abatement of the premises if the court:

(a) Upon motion of the building owner cancels a lease or tenancy and grants restitution of that portion of the premises to the owner; and

(b) Further finds that the acts constituting the nuisance as defined in Section 617.81, Subdivision 2 were committed in a portion of the building under the control of the tenant or lessee whose lease or tenancy has been cancelled pursuant to this section.

617.86. Contempt.

Whoever violates a temporary injunction, permanent injunction, or

abatement order granted under Sections 617.80 to 617.87 may be adjudged in contempt of court.

617.87. Release of Property.

If, after an order of abatement has been entered, the owner appears and pays the cost of the action and files a bond in an amount determined by the court, but not to exceed $50,000, conditioned that the owner will immediately abate the nuisance for a period of one year, the court may, if satisfied of the owner's good faith, order release of the building or portion of it which is subject to the order of abatement. If the premises are released, for each day of the term of the bond that the owner knowingly permits any part of the premises to be used for any activity which was the basis of the abatement order, the owner shall forfeit $ 1,000 under the bond. Forfeiture under the bond does not relieve the owner from prosecution for contempt. Release of the property pursuant to this section does not release it from an injunction issued under Section 617.83 or any other judgment, penalty, lien or liability to which it may be subject by law.

3. Upon information and belief, within the preceding two years, two persons have been convicted of prostitution related offenses at Yoshiko's Sauna at 117 North Washington, Minneapolis, according to the

allegations of paragraph 6 of Plaintiff's complaint.

4. As a result, by virtue of the conduct of the individuals involved in the above-mentioned criminal convictions, this answering Defendant is subject to having her business and real property interest closed for all purposes for a period of up to one year, and having all movable property therein sold, even if this answering Defendant had no knowledge of the actual activity occurring therein before it took place, no ability to prohibit or control said conduct and did not have the specific intent to further that unlawful conduct.

5. As a result, Minnesota Statutes Sections 617.80617.37 unconstitutionally infringe upon this answering Defendant's right to freedom of association as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

6. This answering Defendant was not a party to either of the criminal prosecutions set forth in Paragraph 6 of Plaintiff's complaint. As such, she had no opportunity to participate in or be heard at any of the criminal proceedings as to the guilt of innocence of the Defendants therein.

7. Under the plain language of Minnesota Statutes Section 617.81, Subd. 2, upon two or three prostitution convictions, depending on

whether they are for gross misdemeanors, misdemeanors, or felonies, this answering Defendant's premises, are conclusively determined to be a public nuisance and this answering Defendant is barred from contesting the allegations of nuisance, despite the fact that this answering Defendant was not a party to or participant in the criminal proceedings which gave rise to the convictions and had no opportunity to be heard at those proceedings.

8. As a result, Minnesota Statutes Section 617.81, Subd. 2 and the related sections authorizing temporary injunctions, permanent injunctions, and orders of abatement are facially unconstitutional and unconstitutional as applied to this answering Defendant in that they deprive this answering Defendant of property without due process of law, in violation of the Fourteenth Amendment to the United States Constitution, Article 1, Section 7 of the Minnesota Constitution.

9. This answering Defendant has no adequate remedy at law.

10. As a result, this answering Defendant is entitled, pursuant to Title 42 U.S.C. Section 1983, and Minnesota Statutes Section 551.01, et.seq., to an order declaring Minnesota Statutes Sections 617.81 -617.87 facially unconstitutional, the First and Fourteenth Amendments to the United States Constitution.

CROSS-CLAIM

For her cross claim against Defendant Un Sil Olson, Defendant Myong Magnuson alleges the following:

1. Defendant Myong Magnuson adopts and incorporates by reference the allegations set forth in her Answer and Counterclaim, supra.

2. Defendants Un Sil Olson, and Helen Fisher are each owners of an undivided one-half interest in the real estate located at 117 North Washington Avenue, Minneapolis, Minnesota, which houses, inter alia Yoshiko's Sauna.

3. In August of 1988, Defendant Myong Magnuson entered into a lease agreement with Defendants Olson and Fisher, a copy of which is attached hereto as Exhibit A. Pursuant to said lease agreement, Defendant Myong Magnuson agreed, commencing September 1, 1988, to rent Yoshiko's Sauna on alternate days, commencing September 1, 1988. On days in which Defendant Myong Magnuson Did not occupy the premises, the premises were independently leased to one Kyong Ye Firnstahl.

4. On or about October 13, 1988, Defendant Magnuson entered into an agreement of sale and lease with Defendant Fisher, a copy of

which is attached hereto as Exhibit B, in which Defendant Magnuson agreed to lease and purchase Defendant Fisher's undivided one-half interest in the Yoshiko's Sauna business. The sale, however, was delayed until July 1, 1989, when co-tenant Firnstahl's tenancy terminated.

5. Following the termination of Defendant Firnstahl's tenancy, Defendant Magnuson operated the premises, pursuant to the sale and lease agreement with Defendant Fisher until August of 1990.

6. In August of 1990, Defendant Olson, over Defendant Magnuson's strenuous objection, leased her one-half interest in the subject premises to one Suzy Woo Kotts.

7. Following said lease of Defendant Olson's interest to Suzy Woo Kotts, Defendant Magnuson again had only the right to occupy the premises on alternate days, pursuant to her lease and purchase agreement with Defendant Fisher, with Suzy Woo Kotts occupying the premises on alternate days, pursuant to her lease with Defendant Olson.

8. The conduct leading to both of the convictions which give rise to the alleged nuisance occurred while the premises were exclusively under the occupation and control of Suzy Woo Kotts, not Defendant Magnuson.

9. As noted in Defendant's Answer and Counterclaim, supra,

under the provisions of Minnesota Statutes Section 617.85, if the nuisance is caused exclusively by a tenant, the abatement proceedings can be halted by an order compelling the eviction of the offending tenant.

10. In her capacity as a tenant and contract vendee of Defendant Fisher, Defendant Magnuson has no authority to terminate the tenancy of Suzy Woo Kotts, whose conduct has given rise to the alleged nuisance.

11. As a matter of equity, Defendant Magnuson is entitled to an Order compelling Defendant Olson, through whom said Suzy Woo Kotts leases the premises, to commence an action to terminate the tenancy of Ms. Kotts, pursuant to Minnesota Statutes Section 617.85.

12. In the alternative, in the event that said tenancy is not terminated, and Defendant Magnuson's right to occupy the premises is lost for one year, pursuant to the abatement proceedings, Defendant Magnuson is entitled to damages against Defendant Olson in the amount reasonably necessary to compensate her for her loss of business for the one-year period.

WHEREFORE, this Answering Defendant requests the judgment and decree of this Court as follows:

a. That Plaintiff take nothing by its pretended cause of action, and

that its complaint against this answering Defendant be dismissed with prejudice.

b. That, pursuant to this answering Defendant's counterclaim, this Court enter a declaratory judgment declaring Minnesota Statutes Section 617.81-617.87 facially unconstitutional and unconstitutional as applied to this answering Defendant.

c. That this Court issue a temporary and permanent injunction enjoining and restraining Plaintiff from taking any action to enforce Minnesota Statutes Section 617.81- 617.87.

d. That this answering Defendant be awarded her reasonable costs, disbursements, and attorney's fees pursuant to Title 42 U.S.C. Section 1988.

e. In the alternative, that this Court enter an Order compelling Defendant Olson to commence an action, pursuant to Minnesota Statutes Section 617.85, judicially terminating the tenancy of Suzy Woo Kotts, whose conduct as exclusive occupant of the premise gave rise to the convictions upon which these nuisance abatement proceedings are based, and that the complaint be dismissed with respect to the remaining Defendants.

f. In the event that a temporary or permanent injunction is issued

against this answering Defendant, that this answering Defendant be awarded damages against Defendant Olson for the loss of income reasonably attributed to such injunction.

g. That this Court grant such other and further relief as it may deem just, fair, and equitable.

Randall D.B. Tigue
Attorney for Defendant
Myong Magnuson
2620 Nicollet Avenue
Minneapolis, Minnesota 55408
(612) 874-9903
Minn. Sup. Ct. Lic. No. 110000

Dated: May 14, 1992.

MEMORANDUM AGREEMENT

UN SIL BERG and HELEN FISHER own the real estate located at 117 North Washington Avenue in Minneapolis, Minnesota, and own sauna equipment and furniture, business, and personal property contained on the first floor at said premises. Helen.Fisher, individually and as agent for Un Sil Berg, having entered into a lease with KYONG YE FIRNSTAHL as a lessee thereof, for purposes of sharing said lease space with another; Un Sil Berg does hereby, individually and as agent

for Helen Fisher, enter into this agreement covering the lease of the first floor of the building at said premises, together with the sauna equipment and furniture, business, and personal property located therein, to MYONG C. MAGNUSON, as lessee thereof, under the following terms and conditions.

NOW, THEREFORE, The rights and obligations of said parties are agreed upon as follows:

1. Lessee Myong C. Magnuson shall share the usage of both the first floor of the premises and the sauna equipment and furniture, business, and personal property contained therein with Helen Fisher, or any lessee as may be designated by Helen Fisher, for purposes of each of the occupiers operating, independently, their own individual sauna business enterprise therein.

2. Lessee Myong C. Magnuson shall pay to Un Sil Berg as and for rent thereof the sum of $800.00 per month for the use of sauna equipment and furniture and personal property therein and an additional sum of $400.00 per.month for the leased premises, making a total of $1,200.00 monthly, in. advance, for the term of one year, commencing September 1, 1988, and continuing through August 31, 1989, the sum of $14,400.00 at the time of the execution of this lease. In the event,

however, that the demised premises, or any part thereof, or any part of the improvements of which they form a part, shall be taken for any street or other public use, or shall during the continuance of this one-year term be destroyed.

ADDENDUM

The foregoing memorandum agreement is to be read in conjunction with a similar memorandum agreement between Helen Fisher, individually and as agent for Un Sil Berg and Kyong Ye Firnstahl, providing a similar lease for the same premises. It is understood by all involved that Myong Magnuson and Kyong Ye Firnstahl will each have a half interest as Lessees of the premises, and that said parties have independently entered into an agreement wherein each shall operate the business as a whole on alternate days during the period of the lease, commencing with Kyong Ye Firnstahl taking over as the exclusive tenant on September 1, 1988, with Myong C. Magnuson taking over as the exclusive tenant on the following day, and said parties alternating control of the leased premises on alternate days until the lease is completed.

Dated: _____, 1988

_____
Helen Fisher
Dated: 8 - 25 - , 1988.

_____
Myong Magnuson
Dated: 8/25 , 1988.

AGREEMENT OF SALE AND LEASE

This agreement, effective the date set forth herein, is entered into between HELEN FISHER (also referred to both as "owner" and as "lessor" herein) on the one hand, and MYONG C. MAGNUSON (also referred to hereinafter as "buyer" and as "lessee" or, alternately, as "MCM")

NOW THEREFORE:

WHEREAS, HELEN FISHER, together with one Un Sil Olson, each own an undivided one-half interest as co-owners of the sauna equipment, furniture, business name "YOSHIKO'S", and personal property used in the sauna business contained on the first floor in the building known as 117 North Washington, Minneapolis, Minnesota; and also, they are the exclusive undivided co-owners of the fee title to that real estate, together with all fixtures attached, and

WHEREAS, HELEN FISHER wishes to sell her entire undivided interest in the sauna equipment, furniture, business name "YOSHIKO'S", and personal property used in the sauna business therein to MYONG C. MAGNUSON, who wishes to purchase and pay the price for same now with delivery of the objects of the sale, however, delayed until July 1, 1989, at which time MCM shall, in addition to acquiring the right to

possession of the objects of the sale, shall have the leasehold right to HELEN FISHER'S undivided one-half interest as a tenant for purposes of operating a sauna business in the premises.

NOW THEREFORE: In consideration of the foregoing and for good and valuable consideration, it is hereby agreed as follows between HELEN FISHER and MYONG C. MAGNUSON; and said agreement is herein approved and accepted in all respects by the co-owner, UN SIL OLSON, all as follows:

1. HELEN FISHER does hereby sell her entire one-half undivided interest in the following described business property to MYONG C. MAGNUSON for the cash price of $40,000 payable herewith, with delivery thereof and right to dominion thereof, deferred until July 1, 1989:

sauna equipment, furniture, business name "YOSHIKO'S", and personal property used in the sauna business.

2. MYONG C. MAGNUSON acknowledges that her right to occupy and use the objects of the sale is deferred until July 1, 1989, in that the objects of the sale are the subject of a lease with another lessee, and HELEN FISHER shall have the exclusive interest and right to the rents generating therefrom until July 1, 1989.

3. In the event that the City of Minneapolis should, for any reason, issue an order or decision having the effect of permanently closing down the premises as a sauna operation, provided however that the cause of the closure is not attributable to MYONG 0. MAGNUSON, HELEN FISHER shall refund the $50,000 cash purchase price to MCM, and shall have a period of up to six months from the time of the closure for purposes of accomplishing this cash refund.

4. In further consideration of the foregoing, the parties hereby enter into a lease covering the premises, which is attached hereto marked Exhibit A.

THIS AGREEMENT ENTERED INTO THIS 13th DAY OF OCTOBER, 1988.

_____
Helen Fisher

_____
Myong C. Magnuson

ACKNOWLEDGMENT AND ACCEPTANCE

UN SIL OLSON does hereby consent to and does approve of the sale by HELEN FISHER to MYONG C. MAGNUSON of HELEN FISHER'S undivided one-half interest in the property described in paragraph 1 of the Agreement herein and consents in all respects to the substitution of MYONG 0. MAGNUSON as a co-owner thereof, and further does hereby acknowledge her undivided one-half ownership therein.

UN SIL OLSON does hereby also consent in all respects to the lease entered into between the parties attached to the Agreement marked Exhibit A and made a part thereof.

Dated: October 13, 1988

_____

Un Sil Olson

MEMORANDUM LEASE

HELEN FISHER and UN SIL OLSON each own an undivided one-half interest in real estate located at 117 North Washington Avenue in Minneapolis, Minnesota. Under separate agreement HELEN FISHER has entered into a sale agreement with MYONG C. MAGNUSON covering her undivided one-half interest in the business assets used in the function and operation of the business known as, YOSHIKO'S" on the first floor of the premises. HELEN FISHER, herein individually, and also as agent for UN SIL OLSON, does hereby enter into this agreement covering the lease of the first floor of the premises to MYONG 0. MAGNUSON, as lessee thereof.

NOW, THEREFORE, The rights and obligations of said parties are agreed upon as follows:

1. Lessee MYONG C. MAGNUSON shall share the usage of the first floor of the premises for purposes of operating a separate and distinct sauna business enterprise therein, together with UN SIL OLSON, in the same area of the premises.

2. Lessee MYONG C. MAGNUSON shall have the right to commence her leasehold interest obtained herein from HELEN FISHER commencing July 1, 1989, through December 31, 1995, as the base term,

paying to HELEN FISHER as the monthly recompense thereof the sum of $700.00 per month, payable on the first day of each month, commencing July 1, 1989.

3. Lessee MYONG C. MAGNUSON shall have the right to an optional term commencing January 1, 1-996, through July 1, 2002, providing that notice of exercise of this option be given in writing to lessor at least six months, but not more than twelve months, before the expiration of the term, provided however that they are able to negotiate a monthly rental suitable to both, together with acceptable costs allocation of the utilities used to service the premises. The right to exercise this optional term shall also be dependent upon the lessee being current in all respects on all provisions of this lease, at the time of giving notice.

4. Lessee MYONG C. MAGNUSON shall also either pay directly to Minnegasco and the City of Minneapolis, or reimburse HELEN FISHER, on a monthly basis, one-half of the gas and water/sewer charges incurred.

5. Lessee MYONG C. MAGNUSON shall also be responsible for paying one-half the electrical costs metered into the leased premises.

6. Lessee MYONG C. MAGNUSON shall accomplish maintenance on the air-conditioning unit except that HELEN FISHER shall be responsible for such major repairs as exceed the sum of $300.00 per repair. Usage of the rear door and elevator area shall be shared with other lessees occupying the upper floors of the building on the premises.

Dated: October 14, 1988

Helen Fisher

Myong C. Magnuson

UN SIL OLSON, by affixation of her signature herein below hereby approves and consents to the undertakings of the parties herein, acknowledges her ownership of an undivided one-half interest in the fee, together with HELEN FISHER, and further consents and accepts the substitution of MYONG C. MAGNUSON for HELEN FISHER in the use and occupation of the space in the premises within the term of this lease.

Dated: 10 - 13, 1988

Un Sil Olson

THIS INDENTURE, made in duplicate this 13th day of October, 1988 by and between Helen Fisher, hereinafter designed and referred to as Lessor, and Myong C. Magnuson, hereinafter designated and referred to as Lessor, and Myong C. Magnuson, hereinafter designated and referred to as tenant,

WITNESSETH; THAT said lessor in consideration of the rents and covenants hereinafter mentioned, to be paid and performed by tenant, does hereby demise, lease and let unto the said tenant, and the said tenant does hereby hire and take form the said lessor, the following described premises situate in the City of Minneapolis, County of Hennepin, State of Minnesota to:wit: that portion of the building located at 117 North Washington Avenue, Minneapolis, Minnesota, currently occupied by the business known as Yoshiko's Sauna.

To Have and To Hold the above premises just as they are, without any liability or obligation on the part of said lessor of making any alternations, improvements or repairs of any kind on or about said premises or the building or buildings of which they are a part, or the equipment, fixtures, plumbing, appliances, or machinery in, upon or serving same, or the streets, alleys, areas, area-ways or passages

adjoining or appurtenant thereto, for the term of 6 l/2 years from and after the lst day of July, l989, to the 30th day of December, l995, both dates inclusive, for the following purposes and for no other purposes, to-wit: the operation of a sauna, meaning a business primarily engaged in providing both a steam bath and massage services.

And the said tenant agrees to and with said lessor to pay the lessor as rent for the above-mentioned premises the sum of fifty-four thousand six hundred ($54,600.00) in monthly payments of seven hundred ($700.00) payable in advance on the first day of each and every month for and during the full term of this lease, at the office of Le Ciel d'Or, 800 Nicollet Mall, Mpls., MN 55402.

1. This lease shall supersede the memorandum agreement between the parties, executed on or about August 25, l988.

2. As further consideration for entering into this lease, Tenant shall pay to Lessor the sum of forty thousand dollars ($40,000.00) upon execution of the lese, receipt of which is acknowledged by Lessor.

3. In the event that the authorized business under this lease becomes unlawful at the present location, or if said business is closed by governmental action prior to June 30, l989, all funds paid by

Tenant to Lessor pursuant to the preceding paragraph shall be refunded in full.

4. Upon the expiration of the present lease, Tenant, at her sole option, may renew the present lease for up to an additional 4 years at a rental not to exceed $1,400.00 per month. Should Tenant exercise this option, she must give written notice to Lessors within 60 days of the expiration of this lese. Thereafter, Tenant, at her sole option, may exercise the right to extend the terms of said lese for up to an additional 3 years, with a rental increase not to exceed 50 percent of the option rent of the preceding rental period.

5. During the period of this lease, or any extension thereof, Lessor agrees not to own, operate, manage, lease, or have any financial interest in any sauna, massage parlor, or health club facility within the City of Minneapolis.

Should Lessor retake possession of the premises, following the expiration of the term of this lease, or any extension thereof, Lessor agrees not to operate, on. the demised premises or to lease the demised premises for use as a sauna, massage parlor, or health club facility, within 7 years of the expiration of this lease, or any extension thereof.

6. Lessee MYONG C. MAGNUSON shall share the usage of the. first floor of the premises for purposes of operating a separate and distinct sauna business enterprise therein, together with UN Sit OLSON, in the same. area of the premises.

7. Lessee MYONG C. MAGNUSON shall also either pay directly to Minnegasco and the City of Minneapolis, or reimburse HELEN FISHER, on a monthly basis, one-half of the gas and water/sewer charges incurred.

8. Lessee MYONG C. MAGNUSON shall also be responsible for paying one-half of the electrical costs metered into the leased premises.

9. Lessee MYONG C. MAGNUSON shall accomplish maintenance on the air-conditioning unit except that HELEN FISHER shall be responsible for such major repairs as exceed the sum of $300.00 per repair.

10. Usage of the rear door and elevator area shall be shared with other lessees occupying the upper floors of the building on the premises.

Helen Fisher, Lessor

Dated: 10-14, 1988

Myong C. Magnuson, Tenant

Dated: 10-14, 1988.

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)

)ss

COUNTY OF HENNEPIN)

Marilee Kaeder, being first duly sworn on oath, hereby deposes and says that on the 14th day of May, 1992, she served by United States mail Defendant's Notice of Removal, Answer and Counterclaim and Crossclaim of Defendant Myong Magnuson upon:

Mr. Scott Reeves

Assistant City Attorney

A-1700 Hennepin County Government Center

Minneapolis, Minnesota 55487

Mr. Stewart Perry

Attorney at Law

Norwest Bank Building

900 East Wayzata Boulevard

Wayzata, MN 55391

by mailing to them true and correct copies thereof

_____

Marilee Kaeder

Sworn and subscribed to before me this

14th day of May, 1992.

_____

Notary Public

STATE OF MINNESOTADISTRICT COURT

COUNTY OF HENNEPINFOURTH JUDICIAL DISTRICT

CASE TYPE: Injunction

City of Minneapolis, a

municipal corporation,

FILE NO: 92-08094

Plaintiff,

vs. **REPLY TO**

COUNTERCLAIM

Helen Fisher, Un Sil Olson

aka Un Sil Berg, Myong Magnuson,

and Suzy Kotts dba Yoshiko's Sauna,

Defendants.

City of Minneapolis, plaintiff, for its Reply to defendant Magnuson's Counterclaim, states and alleges:

I.

Denies each and every allegation of the Counterclaim and puts defendant to its full burden of proof.

II.

Affirmatively alleges that defendant's Counterclaim fails to state a claim upon which relief can be granted.

WHEREFORE, Plaintiff prays for judgment dismissing the Counterclaim, and for an award of its costs, disbursements, and attorney's fees pursuant to 42 U.S.C. Section 1988.

June 29, 1992

ROBERT J. ALFTON

City Attorney

Attorney Reg. No. 1119

SCOTT REEVES

Assistant City Attorney

Attorney Reg. No. 90128

Attorneys for Plaintiffs

A-1700 Government Center

300 South Sixth Street

Minneapolis, MN 55487

(612) 673 - 2066

STATE OF MINNESOTADISTRICT COURT

COUNTY OF HENNEPINFOURTH JUDICIAL DISTRICT

City of Minneapolis, a municipal corporation,

Plaintiff,

NOTICE OF MOTION

vs.

Helen Fisher, Un Sil Olson, a/k/a Un Sil Berg,

and Myong Magnuson, d/b/a Yoshiko's Sauna,

Defendants. Case No. 92-8094

TO: The above-named Plaintiff, and Mr. Scott Reeves, Assistant City Attorney, A-i 700 Hennepin County Government Center, Minneapolis MN 55487, its attorney; Defendants Helen Fisher and Un Sil Olson, and Mr. Stewart Perry, Norwest Bank Bldg., 900 E Wayzata Blvd., Suite 110, Wayzata MN 55391, their attorney; and Intervenor-Defendant Suzy Kotts, and Mr. Jerrold M. Hartke, 820 Southview Blvd., Suite 100, South St. Paul MN 55075-2397, her attorney:

PLEASE TAKE NOTICE that Defendant Myong Magnuson, by the undersigned, will bring the attached motion for hearing before the

Honorable Mary Winter, Judge of the above-named Court, in her Courtroom at the Hennepin County Government Center, on July 2, 1992 at 1:30 p.m., or as soon thereafter as counsel can be heard.

Randall D.B. Tigue

2620 Nicollet Avenue

Minneapolis, Minnesota 55408

(612) 874-9903

Minn. Sup. Ct. Lic. No. 110000

June 15, 1992.

STATE OF MINNESOTADISTRICT COURT

COUNTY OF HENNEPINFOURTH JUDICIAL DISTRICT

City of Minneapolis, a

municipal corporation, Case No.: 92-08094

Plaintiff, Case Type: Injunction

vs.

Helen Fisher, Un Sil Olson

aka Un Sil Berg, and Myong

Magnuson, dba **MOTION FOR TEMPORARY**

Yoshiko's Sauna, **INJUNCTION**

Defendants.

The above named Plaintiff, by the undersigned, hereby moves this Court for an order, pursuant to Minnesota Statutes, Sections 617.80 through 617.87, granting a temporary injunction as follows, until the above-entitled action is finally resolved on its merits:

1. Enjoining and prohibiting defendants from operating, leasing to, or allowing any other person to operate Yoshiko's Sauna, in the building at 117 North Washington Avenue.

2. Enjoining and prohibiting defendants from operating or allowing the operation of any other sauna, massage parlor, rap parlor, escort service, or outcall service in the building at 117 North Washington Avenue.

3. Enjoining and prohibiting defendants from knowingly allowing any person to commit an act of prostitution, or to engage in prostitution - related activities. within the building at 117 North Washington Avenue.

4. Ordering defendants to post a bond in the sum of $50,000.00, conditioned upon their compliance with the temporary injunction in this action, and conditioned that they will immediately abate the public nuisance at 117 North Washington Avenue.

The motion is based upon the facts stated in the attached Verified Complaint, Memorandum in Support of Motion for Temporary Injunction, Affidavits of Theodore W. Wilson, Thomas C. Reid, and Edward T. Conroy, and attached exhibits.

Dated: April 24, 1992.

ROBERT J. ALFTON

City Attorney

Attorney Reg. No. 1119

by: SCOTT REEVES

Assistant City Attorney

Attorney Reg. No. 90128

Attorneys for Plaintiff

A-1700 Government Center

300 South Sixth Street

Minneapolis, MN 55487

(612) 673-2066

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a

municipal corporation, Case No.: 92-08094

Plaintiff, Case Type: Injunction

v.

Helen Fisher, Un Sil Olson **AFFIDAVIT OF**

aka Un Sil Berg, and **THEODORE W. WILSON**

Myong Magnuson dba

Yoshiko's Sauna,

Defendants.

Theodore W. Wilson, being first duly sworn, deposes and says:

1. I am employed as Court Manager for the Court Administrator, Fourth Judicial District of Minnesota.

2. I am responsible for mailing notices of conviction to owners and interested parties in nuisance actions under Minnesota Statutes, Section 617.81, subdivision 3.

3. Attached are certified copies of Fourth Judicial District Court computer records of the case histories of criminal case numbers 90-

089051 and 91-039512 regarding prostitution convictions arising from Yoshiko's Sauna.

4. Attached are true and accurate copies of notices of conviction, and accompanying cover letters, which were mailed at my direction regarding convictions for prostitution occurring at Yoshiko's Sauna, 117 Washington Avenue North, Minneapolis, MN.

5. At my direction, the attached Notices of Convictions were recorded with the Hennepin County Recorder.

Theodore Wilson

Subscribed and sworn to before me

this 23 day April, 1992.

Judith A. Worwa

Notary Public

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

FIRST DIVISION, MINNEAPOLIS

Criminal File Number: 90089051

NOTICE OF CONVICTION

PURSUANT TO MINNESOTA

STATUTE 617.81, SUBDIVISION 3

TO:

Helen C. Fisher
6520 Nordic Drive
Edina, MN 55435

Yoshiko Myong
117 Washington Ave.
Minneapolis, MN 55401

Manager, Yoshiko's Sauna
117 Washington Ave N. lst Fl.
Minneapolis, MN 55401

Myong Magnuson
117 Washington Ave. N. 1st fl.
Minneapolis, MN 55401

Un Sil Olson
6400 Barrie Road #1410
Edina, MN 55435

Occupants
117 Washington Ave.
Minneapolis, MN 55401

You are hereby notified pursuant to Minnesota Statute 617.81, Subdivision 3, that Suzy W. Kotts was convicted on March 27, 1991 of an offense described in Minnesota Statute 617.81, Subdivision 2 relating to public nuisances, to-wit, gross misdemeanor prostitution

which occurred at Yoshiko's Sauna, 117 Washington Ave N., Minneapolis, Minnesota, 55401 which address has the legal description of Town of Minneapolis Addition, Lot 8, Block 55, Nwly 22 feet and Property Identification Number 22-029-24-410066.

You are hereby notified that three misdemeanor convictions for such an offense, or two convictions at least one of which is a felony or gross misdemeanor, within a two year period, for conduct occurring at Yoshiko's Sauna could result in the premises being declared a public nuisance. Under Minnesota Statutes, Sections 617.80 through 617.87, the district court may prohibit the operation of a public nuisance, order the premises closed for up to one year and order other relief as appropriate.

Under Minnesota Statute 617.81, Subdivision 3, this notice will be filed with the County Recorder.

_____

Jack M. Provo, Administrator

Fourth Judicial District Court

Date 4-22-91

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

April 24, 1991

Ms. Helen C. Fisher

6520 Nordic Drive

Edina, MN 55435

Dear Ms. Fisher:

As an interested party in the property located at (Yoshiko's Sauna), 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute § 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

TWW/nbe

Enclosure

STATE OF MINNESOTA

DISTRICT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

April 24, 1991

Myong Magnuson

117 Washington Avenue North

First Floor

Minneapolis, MN 55401

Dear Myong:

As an interested party in the property located at (Yoshiko's Sauna), 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute § 617.81, Subdivision 3.

Theodore W. Wilson

Court Manager

TWW/nbe

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

April 24, 1991

Yoshiko Myong

117 Washington Avenue North, First Floor

Minneapolis, MN 55401

Dear Yoshiko:

As an interested party in the property located at (Yoshiko's Sauna), 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute § 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

TWW/ nbe

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

April 24, 1991

Un Sil Olson

Edina, MN 55435

Dear Un Sil:

As an interested party in the property located at (Yoshiko's Sauna), 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute § 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

TWW/nbe

Enclosure

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

April 24, 1991

Manager

Yoshiko's Sauna

First Floor

117 Washington Avenue North

Minneapolis, MN 55401

Dear Sir/Madam:

As an interested party in the property located at (Yoshiko's Sauna), 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute § 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

TWW/ nbe

Enclosure

STATE OF MiNNESOTA
DISTRICT COURT OF MINNESOTA
FOURTH JUDICIAL DISTRICT

April 24, 1991

Occupants

Yoshiko's Sauna

117 Washington Avenue North

First Floor

Minneapolis, MN 55401

Dear Occupants:

As interested parties in the property located at (Yoshiko's Sauna), 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute § 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

TWW/nbe

Enclosure

STATE OF MINNESOTADISTRICT COURT

COUNTY OF HENNEPINFOURTH JUDICIAL DISTRICT

FIRST DIVISION MINNEAPOLIS

Criminal File Number: 91039512

NOTICE OF CONVICTION

PURSUANT TO MINNESOTA

STATUTE 617.81, SUBDIVISION 3

TO:

Helen C. Fisher
6520 Nordic Drive
Edina, MN 55435

Myong Magnuson
117 Washington Ave. N. 1st Fl.
Minneapolis, MN 55401

Yoshiko Myong
117 Washington Ave. N. 1st Fl.
Minneapolis, MN 55401

Un Sil Olson
6400 Barrie Road #1410
Edina, MN 55435

Manager Yoshiko's Sauna
117 Washington Ave. N. 1st Fl.
Minneapolis, MN 55401

Occupants
117. Washington Ave. N. lst Fl.
Minneapolis, MN 55401

Re: Notice of Conviction, Criminal File No. 91039512,

State of Minnesota, Fourth Judicial District Court

You are hereby notified pursuant to Minnesota Statute 617.81,

Subdivision 3, that Lola Jean Ekobena Skenandore was convicted on September 19, 1991, of an offense described in Minnesota Statute 617.81, Subdivision 2, relating to public nuisances, to-wit, Prostitution, which occurred at Yoshiko's Sauna, 117 Washington Ave. N.. Minneapolis, Minnesota, 55401, which address has the legal description of Town of Minneapolis Addition, Lot 8, Block 55, Nwly 22 feet and Property Identification Number 22-029-24-410066.

Also, you are hereby notified that three misdemeanor convictions for such an offense, or two convictions at least one of which is a felony or gross misdemeanor, within a two year period, for conduct occurring at Yoshiko's Sauna could result in the premises being declared a public nuisance. Under Minnesota Statutes, Sections 517.80 through 517.87; the District Court may prohibit the operation of a public nuisance, order the premises closed for up to one year and order other relief as appropriate.

Under Minnesota Statute 617.81, Subdivisions 3, this notice will be filed with the County Recorder.

_____

Date: September 23, 1991 Jack M. Provo, Administrator

Fourth Judicial District Court

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 23, 1991

Helen C. Fisher

6520 Nordic Drive

Edina, MN 55435

Dear Ms. Fisher:

As an interested party in the property located at 117 Washington Avenue North, Minneapolis, Minnesota, 55401, please find attached corrected copies of two Notices of Arrest and Seizure pursuant to Minnesota Statute Sec.617.81, Subdivision 3.

Theodore W. Wilson

Court Manager

TWW/wwr

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 23, 1991

Myong Magnuson

117 Washington Ave. N. 1st Fl.

Minneapolis, MN 55401

Dear Ms. Magnuson:

As an interested party in the property located at 117 Washington Avenue North, Minneapolis, Minnesota, 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute Sec. 617.81, Subdivision 3.

Theodore W. Wilson

Court Manager

TWW/wwr

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 23, 1991

Yoshiko Myong

117 Washington Ave. N. 1st Fl.

Minneapolis, MN 55401

Dear Ms. Myong:

As an interested party in the property located at 117 Washington Avenue North, Minneapolis, Minnesota, 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute Sec. 617.81, Subdivision 3.

Theodore W. Wilson

Court Manager

TWW/wwr

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 23, 1991

Un Sil Olson

6400 Barrie Road #1410

Edina, MN 55435

Dear Ms. Olson:

As an interested party in the property located at 117 Washington Avenue North, Minneapolis, Minnesota, 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute Sec. 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

TWW/wwr

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 23, 1991

Manager, Yoshiko's Sauna

117 Washington Ave. N. 1st Pl.

Minneapolis, MN 55401

Dear Manager:

As an interested party in the property located at 117 Washington Avenue North, Minneapolis, Minnesota, 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute Sec. 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

TWW/wwr

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 23, 1991

Occupants

117 Washington Ave. N. 1st Fl.

Minneapolis, MN 55401

Dear Occupants:

As interested parties in the property located at 117 Washington Avenue North, Minneapolis, Minnesota, 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute Sec. 617.81, Subdivision 3.

Theodore W. Wilson

Court Manager

TWW/wwr

Enclosure

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a municipal corporation,

Plaintiff,

vs.

Helen Fisher, Un Sil Olson aka Un Sil Berg, and Myong Magnuson dba Yoshiko's Sauna,

Defendants.

Case No. 92-08094

Case Type: Injunction

AFFIDAVIT OF THOMAS C. REID

Thomas C. Reid, being first duly sworn, deposes and says:

1. I am a Minneapolis police officer presently assigned to the Minneapolis City Attorney's Office as an investigator.

2. I have investigated the ownership of Yoshiko's Sauna with the following results:

a. On April 1, 1991, and again on March 24, 1992, Minnegasco furnished written records indicating that the gas account for 117 Washington Avenue North is billed to Un Sil Berg who is

listed as the subscriber-owner.

b. On March 28, 1991, and again on March 27, 1992, NSP furnished written records indicating that the electric account for 117 Washington Avenue North (1st Floor) is billed to Yoshiko Myong, 117 Washington Avenue North.

c. On March 28, 1991, and again on March 24, 1992, U.S. West furnished written records indicating that the telephone account for the business is billed to Yoshiko's Sauna, 117 washington Avenue North, Minneapolis, Minnesota 55408.

d. The trade name "Yoshiko's" at 117 Washington Avenue North was registered as an unincorporated business with the Minnesota Secretary of State on March 27, 1991, by Myong Magnuson.

e. The first floor of 117 Washington Avenue North is a commercial building and is not certified for occupancy as a dwelling unit. The upper floors contain- rented apartment units.

f. The records of the Minneapolis Water Department indicate that the water bill is sent to Un Sil Berg,117 Washington Avenue North, Minneapolis, MN 55401-1619.

g. The records of the Hennepin County Recorder and Auditor's offices indicate that the property is owned by Helen Fisher and Un Sil

Berg. Helen Fisher is the taxpayer of record according to the records of the Hennepin County Auditor. The last property tax bill was paid by check drawn on the joint business account of Helen C. Fisher and Un Sil Olson, 117 Washington Avenue North. There are no contract for deed or leasehold interests recorded against the property.

_____

Thomas C. Reid

Subscribed and sworn to
before me this 23rd day
of April, 1993.

_____

Notary Public

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis,

a municipal corporation,

Plaintiff, **DEFENDANT MYONG MAGNUSON'S MOTION FOR SUMMARY JUDGMENT**

vs.

Helen Fisher, Un Sil Olson,

a/k/a Un Sil Berg,

and Myong Magnuson,

d/b/a Yoshiko's Sauna,

Defendants. Case No. 92-8094

Defendant Myong Magnuson, by the undersigned, hereby moves this Court for an Order, pursuant to Rule 56.02 of the Minnesota Rules of Civil Procedure of District Courts, granting Defendant summary judgment, dismissing Plaintiff's complaint against her, in that there are no material facts in dispute and that Defendant Myong Magnuson is entitled to judgment, as a matter of law, on the following

grounds:

1. Minnesota Statutes Section 617.81-617.87 are facially unconstitutional, and unconstitutional as applied to Defendant Myong Magnuson.

a. Because the statues absolutely bind Defendants by the results of legal actions to which they are not parties and over which they had no control, the statutes deprive Defendants of property without due process of law, in violation of the Fourteenth Amendment to the United States Constitution, and Article I, Section VII of the Minnesota Constitution.

b. The statutes are facially unconstitutional and unconstitutional as applied to Defendant Myong Magnuson, in that they violate Defendant's right to freedom of association, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

2. Plaintiff has not complied with the procedural requirements of the Nuisance Abatement Statute, precluding both temporary and permanent injunctive relief under the statute.

3. Because the nuisance in question did not occur on any portion of the premises controlled by Defendant Magnuson, Defendant

Magnuson should not be the subject of either a temporary or a permanent order of abatement.

The foregoing motion shall be based upon the affidavits, exhibits, and memorandum filed by Defendant Myong Magnuson in opposition to Plaintiff's motion for temporary injunction, and upon all of the files, records, and proceedings herein.

Randall D.B. Tigue

Attorney for Defendant

Myong Magnuson

2620 Nicollet Avenue

Minneapolis, Minnesota 55408

(612) 874-9903

Minn. Sup. Ct. Lic. No. 110000

Dated: June 15, 1992

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

CASE NO. 92-8094

STATE OF MINNESOTA)

COUNTY OF HENNEPIN)

Randall Tigue of the City of Minneapolis, County of Hennepin, in the State of Minnesota, being first duly sworn, says that on the 15th day of June, 1992, he served the annexed:

1. Notice of Motion
2. Notice for Summary Judgment
3. Memorandum in Opposition to Plaintiff's Motion for Summary Judgment
4. Supporting Affidavit

by mailing a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at Minneapolis, Minnesota, directed to:

Mr. Richard S. Slowes

Assistant Solicitor General

525 Park Street, Suite 200

St. Paul MN 55103

Subscribed and sworn to before me this 15th day of June, 1992.

Randall D.B. Tigue

Notary Public

STATE OF MINNESOTA)

COUNTY OF HENNEPIN)

Randall D. B. Tigue of the City of Minneapolis, County of Hennepin, in the State of Minnesota, being first duly sworn, says that on the 15th day of June, 1992, he served the annexed:

1. Notice of Motion; and

2. Notice for Summary Judgment

by mailing a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at Minneapolis, Minnesota, directed to:

Mr. Scott Reeves

Assistant City Attorney

A-1700 Hennepin County Government Center

300 So. Sixth Street

Minneapolis MN 55487

Mr. Stewart R. Perry

Attorney at Law

Norwest Bank BIdg.

900 E Wayzata Blvd.,

Suite 110 Wayzata MN 55391

Mr. Jerrold M. Hartke, Attorney at Law

820 Southview Blvd.,

Suite 100

South St. Paul MN 55075-2397

Subscribed and sworn to before me

this l5th day of June, 1992.

_____

Notary Public

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis,

a municipal corporation,

Plaintiff,

AFFIDAVIT OF MYONG v.

vs. **MAGNUSON**

Helen Fisher, Un Sil Olson, a/k/a Un Sil Berg,

and Myong Magnuson, d/b/a Yoshiko's Sauna,

Defendants. Case No. 92-8094

STATE OF MINNESOTA)

)SS

COUNTY OF HENNEPIN)

Myong Chon Magnuson, being first duly sworn on oath, hereby deposes and says the following:

1. Your affiant is one of the Defendants in the above-entitled matter.

2. Your affiant is also one of two tenants occupying the premises at 117 North Washington Avenue, Minneapolis, Minnesota, operating under the business name Yoshiko's Sauna."

3. Your affiant originally began occupying Yoshiko's premises pursuant to a written lease agreement, executed on August 18,1988, a copy of which is attached as Exhibit A to your affiant's answer, counterclaim, and cross claim.

4. Under the terms of that written lease agreement, your affiant had the right to occupy the premises only on alternating days. On the days in which your affiant did not occupy the premises, the premises were occupied by Kyong Ye Firnstahl.

5. On October 13, 1988, your affiant entered into an agreement with Defendant Helen Fisher, a copy of which is attached as Exhibit B to your affiant's answer, counterclaim, and cross claim. Pursuant to said agreement, your affiant purchased Defendant Helen Fisher's one-half interest in the Yoshiko's Sauna business, with said purchase to take affect on July 1,1989, following the termination of the lease to Kyong Ye Firnstahl.

6. Commencing on July 1,1989, your affiant was the exclusive tenant of Yoshiko's until August, 1990.

7. In August, 1990, Defendant Un Sil Olson, the owner of the other one-half interest in Yoshiko's attempted to assert the right to occupy the premises one-half time, much as had been the arrangement with Ms. Firnstahl.

8. Your affiant further discovered that it was Ms. Olson's intent, not to operate the business during her one-half interest herself, but rather to lease the premises one-half time to One Suzy Woo Kotts.

9. Your affiant strenuously objected to this, and, at your affiant's instruction, your affiant's attorney wrote a letter to Ms. Olson, a copy of which is attached hereto as Exhibit A asserting that since your affiant was purchasing Ms. Fisher's one-half interest in the premises, your affiant was a partner of Ms. Olson and Ms. Olson could not, under the Uniform Partnership Act, assign her interest in partnership property to Ms. Kotts, without your affiant's consent.

10. On August 21, 1990, Ms. Olson's attorney, Hosmer A. Brown, wrote to your affiant's attorney denying the existence of a partnership, and continuing to assert Ms. Olson's right to enter the business and occupy it on alternating days. See Exhibit B.

11. In response, your affiant's attorney wrote a letter to Mr. Brown, a copy of which is attached hereto as Exhibit 0, continuing to

assert your affiant's right not to have the other one half interest in the premises leased out. Your affiant was particularly concerned that Ms. Olson's prospective tenant was Suzy Woo Kotts, a person your affiant knew to have been repeatedly convicted of prostitution. Your affiant believed that leasing the premises to Ms. Kotts could jeopardize your affiant's continued ability to operate the business for precisely the reason asserted by Plaintiff in this case. In that letter, your affiant's attorney specifically wrote to Ms. Olson's attorney the following:

> "[Y]our client's prospective tenant is an individual who has been convicted on at least three occasions of prostitution. Under the provisions of Minnesota Statutes Sections 617.80-617.87, should three convictions for misdemeanor prostitution or two convictions for gross misdemeanor prostitution occur within a two-year period, the premises may be closed for all purposes for up to one year, and the personal properly therein sold. My client therefore believes that your client's prospective tenant jeopardizes my client's interest in the property."

12. After both litigation and physical violence were threatened by both sides, your affiant reluctantly agreed not to attempt to litigate her continued right to occupy the subject premises exclusively, and

consented to allow Ms. Olson to lease the subject property to Ms. Kotts, with Ms. Kotts and your affiant operating the premises on alternate days, in exactly the same arrangement that your affiant previously had with Ms. Firnstahl.

13. On the alternative days when Ms. Kotts occupied the premises, your affiant had no control over the premises whatsoever.

14. In fact, when your affiant attempted to confront Ms. Kotts over the fact that she was permitting prostitution to take place on the premises and failing to pay her share of the bills, Ms. Kotts responded by falsely claiming harassment on the part of your affiant and obtaining an ex parte temporary restraining order on February 11, 1992, a copy of which is attached hereto as Exhibit 0.

15. In response to the restraining order, your affiant and Ms. Kotts appeared before Referee Schumacher on February 19,1992, in which a stipulated order was entered, a copy of which is attached hereto as Exhibit E. Part of the order stipulated to was that "pending further of this Court, Respondent (your affiant) shall not be present at the parties' business premises, Yoshiko's Sauna, when Petitioner (Suzy Kotts) is present there.

16. The issue was finally resolved on March 12,1992, when the

court entered a mutual restraining order, restraining both your affiant and Ms. Kotts from harassing each other, a copy of said mutual restraining order is attached hereto as Exhibit F.

17. The conduct leading to all three convictions at Yoshiko's Sauna has occurred while Suzy Woo Kotts has been in exclusive control of the premises:

a. Obviously the conviction of Ms. Kotts herself occurred while Ms. Kotts was operating the premises, not your affiant.

b. The arrest of Lola Jean Ekobena occurred on June 4, 1991, on a Tuesday, in which the premises were occupied exclusively by Suzy Woo Kotts, not your affiant.

c. Likewise, Kathie Moos, arrested on December 10,1991, was arrested on the day in which the premises were occupied by Suzy Woo Kotts.

18. Your affiant has had no authority, under the lease agreement with Defendant Fisher, to control the premises on the days that Defendant Olson leases the premises to Suzy Woo Kotts, and since February, 1992, your affiant has been under a restraining order from this Court to that effect.

19. Your affiant executes this affidavit in opposition to Plaintiff's

motion for a temporary injunction, as to your affiant.

Further your affiant sayeth not.

_____

Myong Chon Magnuson

Sworn to and subscribed before me

this 18th day of May, 1993.

_____

Notary Public

EXHIBIT A

RANDALL D.B. TIGUE

Attorney at Law

Nicollet Avenue Professional Building

2620 Nicollet Avenue South

Minneapolis, Minnesota 55408

August 7, 1990

Ms. Un Sil Olson

6400 Barrie Road

Apartment 1410

Edina, Mn

RE: Yoshiko's Sauna

117 North Washington

Minneapolis, MN

Dear Ms. Olson:

Please be advised that I represent Myong Magnuson, in the matter concerning your contemplated plans to lease the above-described premises.

As I understand the situation, prior to Ms. Magnuson 5 assuming an interest in the premises, you operated Yoshiko's Sauna under an agreement of partnership with one Helen Fisher. On or about

October 13, 1988, Ms. Fisher conveyed here interest in your partnership agreement to my client, Myong Magnuson. You specifically consented to such a conveyance. I am enclosing herein a copy of the agreement between Helen Fisher and Myong Magnuson, consented to by you. As a result, Ms. Magnuson assumed the rights and liabilities of Ms. Fisher under her partnership agreement with you.

It is now my understanding that you intend to lease your interest in the partnership property, at 117 North Washington, to a third party, against my client's wishes, and without my client's consent. please be advised that such contemplated conduct is in direct violation of the Uniform partnership Act, in particular, Minnesota Statutes Section 323.24(2), which provides:

> "[A] partner's right in specific partnership property is <u>not</u> assignable except in connection with the assignment of the rights of all partners in the same property (emphasis supplied) ..."

As a result, the law does not permit you to assign, by sale, lease, or otherwise, your interest in the specific property of the partnership, without the consent of my client, who has succeeded to

your partner's interest. I have instructed my client not to recognize or permit the lease to take place and to insist on continued possession of the premises. If necessary, my client is prepared to litigate to enforce her rights under the Uniform Partnership Act.

Yours truly,

Randall D.B. Tigue

Attorney at Law

RDBT/mk

c: Ms. Myong Magnuson

Yoshikos

EXHIBIT B

HOSMER A. BROWN

ATTORNEY AT LAW

3801 WEST 50TH STREET

MINNEAPOLIS, MINNESOTA 55410-2074

(612) 927-8837

August 21, 1990

Randall D. B. Tigue

Attorney at Law -

2620 Nicollet Avenue South

Minneapolis, MN 55408

Dear Mr. Tigue:

I have your letter of August 7, 1990 addressed to Ms. Un Sil Olson re: Yoshiko's Sauna. I am representing Un Sil Olson.

You state that your client, Mr. Magnuson, is operating in partnership with my client pursuant to an assignment from Mrs. Fisher of Mrs. Fisher 's interest in the partnership.

I am unaware of any partnership agreement, and if you have one I would appreciate a copy of it, or if it is a verbal agreement, I'd appreciate the facts you are relying upon. Have partnership tax

returns been filed, is there a partnership tax TD number, are there any employment returns showing the partnership? I assure you I am not attempting to be contentious, but it was my understanding that Mrs. Fisher, Ms. Olson and their successors had operated the business as distinct co-owners, and that your client's agreement leasing Ms. Olson's one-half interest will terminate on August 31st of this year. If we are unable to reach an accommodation with you and your client, then Ms. Olson will reenter the business and operate her one-half on alternate days as was their custom. I would appreciate receiving your basis for the partnership.

Very truly yours,

Hosmer A. Brown

HAB:vh

EXHIBIT C

Randall D. B. Tigue

Attorney at Law

Nicollet Avenue Professional Building

2620 Nicollet Avenue South

Minneapolis, Minnesota 55408

(612) 874-9903

August 30, 1990

Mr. Hosmer Brown

Attorney at Law

3801 West 50th Street

Minneapolis, MN 55410

BE: Yoshiko's Sauna

Dear Mr. Brown:

I am In receipt of your letter regarding Un Sil Olson and her plans to lease out her half interest at Yoshiko 's.

In response to your specific inquiry, there is no written partnership agreement, but it is absolutely clear that your client and Helen Fisher had between them a verbal partnership agreement jointly to operate Yoshiko's Sauna, and share the proceeds thereof. As I am certain you are aware, the Uniform Partnership Act, in particular, Minnesota

Statutes Section 323.02, Subd. 8 defines the term "partnership" as "an association of two or more persons to carry on as co-owners of a business for profit." Clearly, Ms. Fisher and your client operated Yoshiko's as co-owners for profit. They shared the proceeds, and jointly operated the business.

It is also equally clear that, totally apart from the requirements of the Uniform Partnership Act, each required the consent of the other to sell or lease an interest in the partnership property, to-wit: the Yoshiko's Sauna location. Both my client's lease with Helen Fisher and her subsequent purchase of Helen Fisher's partnership interest required the consent of your client. My client is insisting upon nothing more than the exercise of that same right, when your client decides to lease the partnership premises.

With respect to your alternative proposal that your client personally operate the business for half the period of time in question, we have two immediate problems with that:

First of all, your client has repeatedly told my client she will not personally operate the business herself. Rather, she desires to lease it out to another individual. My client is unwilling to abandon the premises for half the period of time, with the knowledge that your

client intends to lease the premises. Secondly, your client's prospective tenant is an individual who has been convicted on at least three occasions of prostitution. Under the provisions of Minnesota Statutes Sections 617.80 - 617.87, should three convictions for misdemeanor prostitution or two conviction for gross misdemeanor prostitution occur within a two-year period, the premises may be closed for all purposes for up to one year, and the personal property therein sold. My client therefore believe that your client's prospective tenant jeopardizes my client's interest in the property.

Secondly, and more importantly, I have just learned from my client that back in June of this year, your client verbally agreed to continue my client's lease for a period of one year after the expiration at the end of August, 1990. Your client even gave a handwritten note to that effect, a copy of which I am enclosing herein. IN that note, written on or about June 25, 1990, your client requested the sum of $7,200.00 on or before August 1, 1990, and a subsequent $7,800.00 in cash after six months. Your client requested an initial deposit of $2,000.00 against the $7,200.00. My client gave your client a cashier's check, a copy of which is enclosed herein, which your client received, and kept, promising my client rental on the premises.

It is my understanding that a dispute then arose when my client objected to the cash portion of the payment, in that she did not wish to assist your client in the avoidance of federal and state income tax on the proceeds. It is our position that our clients entered into a binding contract to continue the lese for an additional year, and your client accepted money on those conditions.

Accordingly, I am enclosing herein two additional checks payable to your client, one in the sum of an additional $5,200.00, as promised, and a second $7,800.00 to cover the second installment, as set forth in the note.

Please be advised that it is our position that we have a valid one year extension of the lease, agreed to by your client. We will resist any attempt by your client to abrogate that agreement.

Yours truly,

Randall D.B. Tigue

Attorney at Law

RDBT/mk

c: Ms. Myong Magnuson

EXHIBIT D

In Re the Matter of: **ORDER FOR HARASSMENT**

Suzy Woo Kotts **HEARING AND EX PARTE**

Petitioner **TEMPORARY RESTRAINING ORDER**

and

Myong C. Magnuson, HA 92-3061

Defendant.

TO: Myong C. Magnuson, THE ABOVE-NAMED RESPONDENT.

Upon the Affidavit and Petition for a Restraining Order and upon all of the records and proceedings in the matter: IT IS HEREBY ORDERED that you must personally appear and show cause, before the above-named Court, at Room 1253, Hennepin County Government Center, 300 South Sixth Street, Minneapolis, MN 55487, on February 19, 1992, at 10:30 a.m., or as soon thereafter as the same can be heard, why the relief sought by the Petitioner in the Petition for a Restraining Order should not be granted.

The Court finds reasonable grounds to believe that Respondent has engaged in harassment, which is set forth in the Affidavit and

Petition herein.

Respondent shall cease and avoid the harassment of Suzy Woo Kotts Harassment means repeated, intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security or privacy of another.

Respondent shall not do any of the following

NOTICE

The following specific conduct will constitute a violation of this order. Respondent shall have no contact with Petitioner in person by telephone or any other agent.

This order will be effective until the hearing scheduled above. The Court may extend the duration of this order upon the written consent of the parties, or for an additional seven day period upon a showing that Respondent has not been served despite the exercise of due diligence.

A peace officer must arrest without warrant and take into custody a person if the peace officer has probable cause to believe the person has violated this order.

Failure of the Respondent to appear at the scheduled hearing may result in the granting of the relief sought by the Petitioner as a default

matter. Failure to appear WILL NOT be a defense to prosecution for violation of any part of this order. Failure of the Petitioner to appear will be grounds for dismissal of this action.

The Court Administrator shall send a copy of this Temporary Restraining Order to the Minneapolis Police Department.

VIOLATION OF THIS ORDER IS A MISDEMEANOR AND MAY RESULT IN IMPRISONMENT OF UP TO NINETY (90) DAYS.

Dated: February 11, 1992

_____

Judge

STATE OF MINNESOTA

COUNTY OF HENNEPIN

Suzy Woo Kotts,

4915 Humboldt Avenue

Minneapolis, Minnesota

Petitioner

and

Myong C. Magnuson,

Respondent

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

PETITIONER'S AFFIDAVIT AND PETITION FOR HARASSMENT ORDER

HA 92-3061

The undersigned Petitioner, being sworn on oath states that:

1. I am the Petitioner in this action, which is a Petition for restraining order. I am the victim of the harassment described in this Petition. This Affidavit is given in support of my Petition under Minn. Stat. 609.748.

2. That my date of birth is 1-27-36 and Respondent's date of birth 11-24-56. The parties are co-owners of a business.

3. Pursuant to Minnesota Statutes Section 609.748, Subd. 1, the following are specific acts of harassment committed by Respondent. Harassment means repeated, intrusive, or unwanted acts, words, or

gestures that are intended to adversely affect the safety, security, or privacy of another.

Petitioner is scheduled to work Mondays, Tuesdays and Fridays with alternating Sundays Respondent works Wednesdays, Thursdays and Saturdays with alternating Sundays, since September 1990, Respondent has locked Petitioner out of the building six times. The lat time was February 9, 1992. Respondent will hook the inside door so Petitioner cannot get in when it is her day to work. Police have been called many times and Respondent will say that it is her day to work.

4. Based on this Affidavit, I request that an Ex Parte Temporary Restraining Order be issued granting me the following relief: and I request a Restraining Order be issued at the hearing.

That Respondent cease or avoid the harassment of Suzy Woo Kotts

That Respondent have no contact with Suzy Woo Kotts in person or by telephone or any other means or person.

and I request a Restraining Order be issued at the hearing.

Subscribed and sworn to

before me on February 11, 1992 _____

Suzy W. Kotts

EXHIBIT E

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Suzy Woo Kotts, **STIPULATION AND ORDER**

Petitioner **FOR CONTINUANCE**

and HA 92-3061

Myong C. Magnuson,

Respondent

STIPULATION

It is agreed by the undersigned parties that the Harassment hearing scheduled for February 19, 1992, be continued to March 12, 1992, at 2:00 p.m., Room 125.

Suzy Kotts Myong Magnuson

Petitioner Respondent

FINDINGS AND ORDER

Petitioner appeared pro se. Respondent was present and was represented by Mary Westerman, Esq.

The above-entitled matter came on for hearing before Referee Schumaker on February 19, 1992.

Based upon the stipulation of the parties and all of the files,

records and proceedings herein,

THE COURT FINDS:

That all parties are present and agree to a continuance of the Harassment Hearing.

IT IS ORDERED:

1. That the above-entitled matter is continued to March 12, 1992, at 2:00 p.m., Room 1253C.

2. That pending further Order of this Court, Respondent shall not be present at the parties' business premises, Yoshiko's Sauna, when, Petitioner is present thereto, Respondent may, however, contact Petitioner by telephone.

_____

REFEREE

Dated: 2/21/92

EXHIBIT F

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Suzy Woo Kotts,

Petitioner **MUTUAL RESTRAINING**

and **ORDER**

Myong C. Magnuson, File No. HA 92-03061

Respondent.

The above-entitled matter came on for hearing before the undersigned, a Judge of District Court on March 12, 1992 upon a motion by Petitioner for the relief specified in the Petition for a RestraIning Order filed herein.

Now, therefore, based upon the evidence adduced and upon all the files, records, and proceedings herein.

1. Petitioner has filed a Petition for a Restraining Order.

2. Respondent has been served with a copy of the Temporary Restraining Order and Respondent has been given notice of the time and place of the hearing on the Petition for Restraining Order.

3. Petitioner and Respondent have agreed to the issuance of

a Mutual Restraining Order and the following Mutual Restraining Order shall issue.

IT IS HEREBY ORDERED:

1. The-parties shall cease or avoid the harassment cf each other. The parties shall not do any of the following:

NOTICE

THE FOLLOWING SPECIFIC CONDUCT WILL CONSTITUTE A VIOLATION OF THIS RESTRAINING ORDER.

a. Any repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of each other.

b. Any contact with each other in person, by telephone,. or by other means or persons.

2. The parties shall cease or avoid the harassment of each other,

The parties shall not do any of the following:

NOTICE

THE FOLLOWING SPECIFIC CONDUCT WILL CONSTITUTE A VIOLATION OF THIS RESTRAINING ORDER.

a. Any repeated, intrusive, or unwanted acts, words, or

gestures that are intended to adversely affect the safety, security, or privacy of each other.

b. Any contact with -each.other in person, by telephone,. or by other means or persons.

3. This Mutual Restraining Order shall remain in effect until March 12, 1994.

4. The Court Administrator shall send a copy of this Mutual Restraining Order to the Hennepin County Sheriff's department and the Minneapolis Police Department which have jurisdiction over the residence of the applicant pursuant to Minn. Stat. 609.784.

5. VIOLATION OF THIS MUTUAL RESTRAINING ORDER IS A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR UP TO 90 DAYS OR A FINE OF UP TO $700 OR BOTH.

6. A PEACE OFFICER MUST ARREST WITHOUT WARRANT AND TAKE INTO CUSTODY THE PETITIONER OR RESPONDENT IF THE PEACE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THAT PERSON HAS VIOLATED THIS MUTUAL RESTRAINING ORDER.

The foregoing facts were found

by me after due hearing and the foregoing order thereon is recommended.

Findings of Fact and Order approved as of date heard.

Referee of District Court

Judge of District Court

Dated:Dated: March 12, 1992